

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Frontier Telephone Petition for Declaratory	)	WC Docket No. 05-276
Ruling Regarding the Application of Access	)	
Charges to IP Transported Calls	)	

**COMMENTS  
of the  
INDEPENDENT TELEPHONE AND TELECOMMUNICATIONS ALLIANCE  
NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc.;  
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION;  
ORGANIZATION FOR THE PROMOTION AND  
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES;  
UNITED STATES TELECOM ASSOCIATION; and the  
WESTERN TELECOMMUNICATIONS ALLIANCE**

Frontier Telephone of Rochester, Inc. (Frontier) seeks a declaratory ruling that it is owed originating access charges for certain long distance calls placed by customers of USA DataNet Corp. (DataNet), an interexchange carrier that utilizes Frontier's local exchange facilities.<sup>1</sup> The Independent Telephone and Telecommunications Alliance (ITTA), the National Exchange Carrier Association, Inc. (NECA), the National Telecommunications Cooperative Association (NTCA), the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), the United States Telecom Association (USTelecom), and the Western Telecommunications Alliance (WTA) (collectively, the Associations)<sup>2</sup> urge the Commission to grant Frontier's

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<sup>1</sup> Pleading Cycle Established for Frontier's Petition for Declaratory Ruling Regarding the Application of Access Charges to IP-Transported Calls, WC Docket No. 05-276, *Public Notice*, DA 05-3165 (rel. Dec. 9, 2005) (*Frontier Public Notice*).

<sup>2</sup> ITTA is an organization of midsize incumbent local exchange carriers ("ILECs"), primarily rural, that collectively serve over ten million access lines in over 40 states. NECA is a non-stock, non-profit

petition as expeditiously as possible and confirm its previous AT&T “IP-in-the-Middle” Order<sup>3</sup> that interstate phone-to-phone calls utilizing Internet protocol (IP) transmission technology are subject both to originating and terminating interstate access charges regardless of whether such calls are routed via intermediate carriers.

At the outset, the Associations note the issues raised in Frontier’s petition are similar to those raised in recent petitions filed by the SBC ILECs and VarTec Telecom, Inc.<sup>4</sup> Like the carriers described in SBC’s petition, DataNet apparently claims its calls should be exempt from access charges because they are transported, in part, using Internet Protocol (IP) technology. As Frontier correctly responds, however, the Commission determined in the AT&T “IP-in-the-Middle” Order that this does not exempt ordinary interexchange traffic utilizing the Public Switched Telephone Network (PSTN) from access charges.<sup>5</sup>

Frontier further explains that DataNet’s reliance on an intermediate carrier to obtain access services does not in any way relieve DataNet of its obligation to

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association formed in 1983 pursuant to the Commission’s Part 69 access charge rules. NECA is responsible for filing interstate access tariffs and administering associated revenue pools on behalf of over 1200 ILECs that choose to participate in these arrangements. NTCA and OPASTCO are national trade associations that represent more than 560 rural rate-of-return regulated telecommunications providers. USTelecom represents over 1200 communications service providers and suppliers for the telecom industry. WTA is a trade association representing approximately 250 rural telephone companies operating west of the Mississippi River.

<sup>3</sup> Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services Are Exempt from Access Charges, WC Docket No. 02-361, *Memorandum Opinion & Order*, 19 FCC Rcd 7457 (2004) (AT&T “IP-in-the-Middle” Order).

<sup>4</sup> Pleading Cycle Established for SBC’s and VarTec’s Petitions for Declaratory Ruling Regarding the Application of Access Charges to IP-Transported Calls, WC Docket No. 05-276, *Public Notice*, DA 05-2514 (rel. Sept. 26, 2005). The Commission has accordingly consolidated its review of Frontier’s petition with its review of those filings. See *Frontier Public Notice* at 2.

<sup>5</sup> Petition for Declaratory Ruling that USA DataNet Corp is Liable for Originating Interstate Access Charges When it Uses Feature Group A Dialing to Originate Long Distance Calls, WC Docket No. 05-276 (Nov. 23, 2005) at 5 (citing AT&T “IP-in-the-Middle” Order.)

compensate Frontier for its portion of local exchange access service.<sup>6</sup> Frontier has demonstrated that originating interstate Feature Group A traffic that is jointly provided by two LECs on its way to the IXC is equally subject to meet point billing<sup>7</sup> as is Feature Group D traffic. It is irrelevant whether access is obtained via Feature Group A or D, just as it is irrelevant how many intermediate carriers are involved in the transport of the calls. Essentially the same arguments were made by VarTec in its recent petition and refuted by the Associations and numerous other commenters in that proceeding.<sup>8</sup> There is accordingly no need to reiterate these points here.

The New York Public Service Commission has already found “the service provided by DataNet is simple, transparent long distance telephone service, virtually identical to traditional circuit-switched carriers.”<sup>9</sup> Because “DataNet imposes the same burdens on the local exchange as do other long distance carriers” it should, according to the New York Commission “pay all applicable and appropriate [intrastate access] charges paid by other long distance carriers.”<sup>10</sup>

The Associations agree, and urge the Commission to issue a similar ruling promptly with respect to the application of interstate access charges to DataNet and to all similarly-situated carriers. As this Commission has recognized, “divergent

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<sup>6</sup> *Id.* at 6, (citing *AT&T “IP-in-the-Middle” Order* at 19.)

<sup>7</sup> When local exchange access is provided jointly by two LECs to an IXC, the costs are billed separately by each LEC for those specific facilities each provides.

<sup>8</sup> See Reply Comments of ITTA, NECA, NTCA, OPASTCO, USTA, and the WTA, WC Docket No. 05-276 (Dec. 12, 2005) at 6-7.

<sup>9</sup> See Complaint of Frontier Telephone of Rochester Against USDataNet Corporation Concerning Alleged Refusal to Pay Intrastate Carrier Access Charges, *Order Requesting Payment of Intrastate Carrier Access Charges*, Case 01-C-1119 (May 31, 2002) at 8-9.

<sup>10</sup> *Id.* at 9.

interpretations [of FCC access charge rules] may have significant implications for competition between these providers, for the ability of LECs to receive appropriate compensation for the use of their networks, and for the application of important Commission rules, such as the obligation to contribute to the universal service support mechanisms.”<sup>11</sup> Frontier’s petition (as well as SBC’s related petition) make clear these adverse effects are happening now. Moreover, many other ILECs are likewise experiencing difficulties collecting access charges from DataNet and other similarly-situated carriers. The Commission should take action to avoid further damage without delay.

### **Conclusion**

Prompt action by the Commission is needed to put a stop to further attempts at regulatory arbitrage and additional waste of Commission time and industry resources by parties claiming regulatory uncertainty where no such uncertainty in fact exists. The Commission should accordingly act quickly and decisively in this and related matters by issuing a clear and strong ruling declaring DataNet and similarly-situated carriers liable for originating and terminating interstate access charges under section 69.5 of its rules and ILEC interstate access tariffs.

Respectfully submitted,

INDEPENDENT TELEPHONE &  
TELECOMMUNICATIONS ALLIANCE

By: /s/ David W. Zesiger  
David W. Zesiger

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<sup>11</sup> *AT&T “IP-in-the-Middle” Order* at ¶ 2. See also Letter from Karen Brinkmann, Latham & Watkins, to Marlene H. Dortch, FCC, WC Docket No. 05-275, CC Docket No. 01-92 (Dec. 12, 2005) (stating Alaska Communications Systems documented an “IP-in-the-Middle” provider who avoids interstate access charges by routing the traffic as local.)

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Associations' Comments was served this 9<sup>th</sup> day of January 2006, by electronic filing and e-mail to the persons listed below.

By: /s/ Elizabeth R. Newson  
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The following parties were served:

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